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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1975

No. 75-538

MIKE GRANCICH, ARCHIE GALEA,
and FRANK MARTINEZ,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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Petitioners herein respectfully move this Court for an order (1) vacating its denial of the Petition for Writ of Certiorari entered on January 12, 1976; and (2) granting the petition. As grounds for this motion, petitioners state the following:

The Solicitor General's response to our Petition for Certiorari sought to distinguish the very relevant case of United States v. Emmons, 410 U.S. 396 by pointing out that there was evidence in this case to show that Local 626 was not truly engaged in collective bargaining but in extorting payments from various unloading companies. The significant omission was, however, as is repeatedly related in petitioners' brief, that the rulings of the trial judge on basic evidentiary questions and the stance of the United States Government foreclosed petitioners from introducing union contracts, health plans, questioning witnesses, questioning the labor lawyer for Local 626 on the parameters of his recommendations on the subject, etc. In doing so, the jury was never in a position to assess the legitimacy of the operation and various persons' roles in it, but had no other option than to conclude that the actions constituted "racketeering" within the meaning of the Hobbs Act. For instance, let us take a simple illustration from the Government's brief before this Court to sustain the

conviction of petitioner GRANCICH:

> "5.a. Petitioner Grancich claims (No. 75-538, pp. 127-129) that there is no evidence that he arranged for the removal of the picket lines from Gold Pack or Quality or that he was involved in the subsequent demand for payment from Goldstein and Gronsky (Counts 3 and 4) by petitioner Galea. [Footnote omitted.] The evidence showed, however, that Gronsky and Goldstein complained to Grancich about the picket lines around their businesses and that the picket lines were removed a few hours after Grancich told them that their problems would be solved. Petitioner Galea, who was present at this meeting, later demanded and received payoffs from Gronsky and Goldstein for removal of the picket lines under the threat of further picketing. This was sufficient

> circumstantial evidence from which the jury could propery [sic] infer Grancich's involvement in both the removal of the pickets and the demand for payment."

Clearly, the attempt to uphold this conviction by classifying the case as circumstantial evidence is farcial. The reason GRANCICH was convicted on that evidence was his inability to present his legitimate labor activities so as to enlighten the jury that there was nothing unusual in his meeting with owners of packing houses concerning his union picketing activity; and the fact that the picket lines were taken down after the meeting in no way meant that money allegedly and subsequently paid to another party involved him at all. Counsel uses this as only one illustration of the thesis that petitioners were effectively precluded from bringing them within the Emmons decision by the tactics of the court and prosecutor. How could the trial jury, the Ninth Circuit Court of Appeals or this Court decide whether the activity fell within the ambit

of the Emmons decision or was "racketeering" activity under the Hobbs Act without a record which permits such a review of all of the relevant evidence? This Court should note that two defendants' cases (Rico and Chacon) were ultimately set aside by the trial court and two more by the appellate court (Jayich and Macht) on the ground that they were manifestly convicted on insufficient evidence. Those convictions, as well as those contested here, resulted from a repeated inability to demonstrate the world of labor-management relations to the trier of fact or even make a sufficient record for the appellate court or this Tribunal.

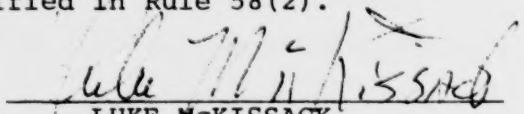
CONCLUSION

For the reasons set forth above, as well as those contained in the Petition for Writ of Certiorari, petitioners pray that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,
LUKE McKISSACK
Counsel for Petitioners

CERTIFICATE OF COUNSEL

As counsel for the petitioners, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).



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